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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

**SAN FRANCISCO BAY AREA RAPID  
 TRANSIT DISTRICT**, a multi-county  
 rapid transit district established and  
 existing under the laws of California;

Plaintiff,

vs.

**WILLIAM D. SPENCER**, an individual;  
**F.W. SPENCER & SON, INC.**, a  
 California corporation; **BRISBANE  
 MECHANICAL CO.**, a California  
 corporation; **WILLIAM MCGAHAN**, an  
 individual; **BRUCE R. BONAR**, an  
 individual; and **DOES 1-25**,

Defendants.

Case No. C 04 4632 SI

**STIPULATION AND JOINT MOTION OF  
 ALL PARTIES TO AMEND THE  
 AMENDED PRETRIAL PREPARATION  
 ORDER OF JUNE 16, 2006:**

- (1) EXTENDING CUTOFF FOR NON-  
 EXPERT DISCOVERY BY SIXTEEN  
 DAYS; AND**
- (2) EXTENDING BY THREE WEEKS  
 ALL DEADLINES FOR  
 DISCLOSURES OF EXPERTS AND  
 EXPERT-DISCOVERY CUTOFF**

**(WITHOUT AFFECTING SCHEDULING  
 FOR DISPOSITIVE MOTIONS,  
 PRETRIAL CONFERENCE, OR TRIAL)**

1 All parties hereto, by and through their respective, undersigned counsel, hereby stipulate  
 2 to, and jointly move for, an order amending the “Amended Pretrial Preparation Order” entered  
 3 herein on June 16, 2006, providing as follows:

- 4 (A) **Non-Expert Discovery Cutoff** is changed from August 29, 2006 to  
 5 September 14, 2006; provided, however, that no further non-expert  
 6 discovery may be propounded and that such discovery may be  
 7 conducted after September 13, 2006 only as provided for  
 8 specifically hereinbelow; and
- 9 (B) **Expert Disclosures and Discovery** shall be conducted as follows:  
 10 (i) for planning and scheduling purposes only, each side shall, on or  
 11 before September 20, 2006, disclose the identity of each expert it  
 12 intends to call to give testimony, together with the subject matter(s)  
 13 on which each such expert is then expected to offer testimony; (ii)  
 14 on or before October 24, 2006, each side will serve upon the other  
 15 the disclosure(s) of experts and each expert’s intended testimony, in  
 16 accordance with Fed. R. Civ. P. 26(a)(2)(B); (iii) on or before  
 17 November 10, 2006, each side will serve upon the other its  
 18 disclosures of rebuttal experts and testimony, in accordance with  
 19 the cited Rule; and (iv) on or before November 22, 2006, all expert  
 20 discovery shall be completed.

21 All other terms of the Amended Pretrial Preparation Order of June 16, 2006 will remain  
 22 unchanged.

23 In support of, and as grounds for, this Motion, the parties state as follows:

24 (1) Despite diligent efforts to complete all non-expert discovery by the current August  
 25 29, 2006 deadline (including very substantial document productions and depositions), the parties  
 26 are unable to complete such discovery, primarily because of vacation and other scheduling  
 27 conflicts of witnesses, including third-party witnesses, unexpected delays in the production of  
 28 documents by third-parties and the greater-than-expected volume of document production by the  
 parties themselves. These circumstances, in turn, have necessitated delays in the depositions of  
 material witnesses.

(2) With the exception of limited discovery that may be required after rulings on  
 discovery motions, based on objections already raised and the subject of just-completed or on-  
 going “meet and confer” negotiations, and the possibility of depositions that the parties have  
 noticed but for which they have not yet been able to perfect service of subpoenas, they have  
 agreed to a firm schedule that will allow the completion of all non-expert discovery by September

1 14, 2006. That schedule, the "Agreed Discovery Schedule," is attached hereto and is  
2 incorporated herein by this reference.

3 (3) Each side has determined that it can properly litigate whatever dispositive motions  
4 are to be filed in this case prior to completion of expert disclosures and discovery and that the  
5 latter may be completed on a schedule independent of the schedule for dispositive motions.  
6 Accordingly, the parties have proposed above an amended schedule for expert disclosures and  
7 discovery that satisfies Fed. R. Civ. P. 26(a)(2)C) and requires completion of all expert discovery  
8 more than ninety (90) days before trial.

9 (4) This stipulation and joint motion is made for the reasons stated and not for  
10 purposes of undue delay or to unfairly prejudice any party or the administration of justice. The  
11 amended Pretrial Preparation Order sought hereby would not affect the schedule for any  
12 procedures or proceedings, including dispositive motions or trial.

13 DATED: August 25, 2006

SQUIRE, SANDERS & DEMPSEY L.L.P.

15 By: /s/Evan S. Nadel

16 Eduardo G. Roy  
17 Rodney R. Patula  
Evan S. Nadel  
Daniel T. Balmat

18 Attorneys for Plaintiff

19 DATED: August 25, 2006

MCINERNEY & DILLON, P.C.

21 By: /s/LeCarie S. Whitfield

22 Timothy L. McInerney  
LeCarie S. Whitfield  
Gregory J. Gangitano

23 Attorneys for Defendants

24 **IT IS SO ORDERED.**

25 DATED: \_\_\_\_\_

26 

27 HON. SUSAN ILLSTON

## AGREED DISCOVERY SCHEDULE

The Parties have agreed to a Stipulation to amend the Court's Pre-Trial Order.

In addition to the terms of that Stipulation, the Parties agree that they will not notice any depositions not already noticed. A Party may complete service of a subpoena for any deposition that has been noticed. The schedule below reflects all of the remaining depositions noticed to date. None of the depositions below will be rescheduled unless ordered by the Court or necessary due to the verified unavailability of a witness.

8/25 (Fri):	2 p.m., Patsy Reese at SSD —> <i>to be rescheduled</i>
8/28 (Mon):	9 a.m., Conco Cement at SSD 9 a.m., Virgilio Talao at M&D
8/29 (Tues):	9 a.m., Gerardina Talao at M&D 1 p.m., Lathrop Construction at M&D
8/31 (Thurs.):	7:30 a.m.–3 p.m., Bruce Bonar at SSD 10 a.m., Jacobs Civil at SSD
9/1 (Friday):	9 a.m., Angela Griffin at SSD 10 a.m., Tom Dunscombe at M&D
9/6 (Wed.):	9 a.m., BART 30(b)(6) at M&D
9/7 (Thurs.):	9 a.m., SLG/BMC 30(b)(6) at SSD 9 a.m., Allyn Simmons at M&D
9/8 (Fri.):	9 a.m., FWS/BMC 30(b)(6) at SSD (The parties disagree about plaintiff's right to this deposition and are meeting and conferring in an effort to resolve their disagreement informally) 1 p.m., Virginia Sevilla at SSD
9/12 (Tues.):	9 a.m., Richard Crawford at SSD 9 a.m., DMJM Harris in LA
9/13 (Wed.):	10 a.m., Carl Kennedy at M&D
9/14 (Thurs.):	10 a.m., Edmundo Anchondo at M&D

The depositions of City and County of San Francisco and its eight employees, originally noticed by defendants for the 23rd, 24th and 28th of August, are subject to a motion to quash filed by the City. The Court will determine whether those depositions, or some of them, will be permitted. If the Court permits any of those depositions to go forward, we will at that time present the Court with a proposed schedule for those depositions accommodating our current commitments, the schedule of the City attorney(ies) who will represent the deponents and the witnesses' availability.

The Parties further agree that the foregoing schedule of depositions may be altered for unforeseen circumstances so long as the alteration does not result in a deposition being rescheduled for a date later than September 15th; provided however, that witness unavailability and that ground only may result in a rescheduling to a date after September 15th, but not later than September 22, 2006.

Apart from depositions, the Parties agree that BART will complete its review of documents tagged by defense counsel and make those documents available for copying by defendants by 5:00 p.m. on Monday, August 28th. Defendants agree that their documents at the Zandonella depository will remain available for BART's review through the end of expert discovery.

**PROOF OF SERVICE**

(Pursuant to Federal Law)

The undersigned certifies and declares as follows:

I, JOHN R. AGUILAR, am a resident of the State of California and over 18 years of age and am not a party to this action. My business address is One Maritime Plaza, Suite 300, San Francisco, California 94111-3492, which is located in the county where any non-personal service described below took place.

On August 25, 2006, a copy of the following document(s):

**STIPULATION AND JOINT MOTION OF ALL PARTIES TO AMEND THE AMENDED PRETRIAL PREPARATION ORDER OF JUNE 16, 2006: (1) EXTENDING CUTOFF FOR NON-EXPERT DISCOVERY BY SIXTEEN DAYS; AND (2) EXTENDING BY THREE WEEKS ALL DEADLINES FOR DISCLOSURES OF EXPERTS AND EXPERT-DISCOVERY CUTOFF (WITHOUT AFFECTING SCHEDULING FOR DISPOSITIVE MOTIONS, PRETRIAL CONFERENCE, OR TRIAL)**

was served on:

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Lake Merritt Plaza  
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**MECHANICAL CO., BRUCE R.**  
**BONAR, and WILLIAM M.**  
**MCGAHAN**

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**SPENCER & SON, INC., BRISBANE**  
**MECHANICAL CO., BRUCE R.**  
**BONAR, and WILLIAM M.**  
**MCGAHAN**

Service was accomplished as follows.

☒ **By U.S. Mail.** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice the mail would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at San Francisco, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid of postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **By Facsimile.** On the above date, I transmitted the above-mentioned document(s) by facsimile transmission machine to the parties noted above, whose facsimile transmission machine telephone number is set forth above.

☐ **By Express Service Carrier.** On the above date, I sealed the above document(s) in an envelope or package designated by Federal Express, an express service carrier, addressed to the above, and I deposited that sealed envelope or package in a box or other facility regularly maintained by the express service carrier, or delivered that envelope to an authorized courier or driver authorized by the express service carrier to receive documents, located in San Francisco, California with delivery fees paid or otherwise provided for.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed on August 25, 2006, at San Francisco, California.

/s/John R. Aguilar  
JOHN R. AGUILAR